CLAYTON E. CLEMENT State Bar No. 42751
MAUREEN REILLY State Bar No. 260986
CLEMENT, FITZPATRICK & KENWORTHY PC
3333 Mendocino Avenue, Suite 200
Santa Rosa, California 95403-2233
Telephone: (707) 523-1181 FAX: (707) 546-1360
E-Mail: cclement@cfk.com

Attorneys for Redwood Empire Disposal
Sonoma County, Inc.

UNTIED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALILFORNIA

REDWOOD EMPIRE DISPOSAL SONOMA COUNTY, INC., a California corporation, Plaintiff, vs. CURTIS J. MICHELINI, an individual; HARRY A. HARDIN, SR., an individual; GLOBAL MATERIALS RECOVERY SERVICES, INC., a California corporation; INDUSTRIAL CARTING, form of entity unknown; and DOES ONE through FIFTY, inclusive, Defendants.	CASE NO. C 10-05736 LB **FIRST AMENDED COMPLAINT FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES; NUISANCE, INJUNCTION AND TREBLE DAMAGES** (Unfair Business Practices)

Plaintiff alleges:

1. Plaintiff Redwood Empire Disposal Sonoma County, Inc. is, and at all times herein mentioned was, a corporation organized and existing under the laws of the state of California, and doing business in the state of California.

2. Defendant Curtis J. Michelini, an individual, is, and at all times herein mentioned was, the record owner of Sonoma County Assessor's Parcel No. ("APN") 046-011-025, more commonly known as 5050 Taylor Avenue, Cotati, Sonoma County.

/////

3. Defendant Harry A. Hardin, Sr., an individual, is, and at all times herein mentioned was, the record owner of Sonoma County APN 046-011-026, more commonly known as 5046 Taylor Avenue, Cotati, Sonoma County, and 046-011-027, more commonly known as 5540 Taylor Avenue, Rohnert Park, Sonoma County. On information and belief, Curtis J. Michelini is, and at all times herein mentioned was also an owner of both of these parcels.

4. Defendant Global Materials Recovery Services, Inc. ("Global Materials") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California, and doing business in the State of California.

5. Defendant Industrial Carting is, and at all times herein mentioned was, an entity of unknown organization, doing business in Sonoma County, California, in connection with Global Materials.

6. Defendants DOES One through Fifty, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to plaintiff. When their true names and capacities are ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were proximately caused by such defendants.

7. The subject parcels, identified in paragraphs 2 and 3 above (hereinafter the "Property") are contiguous and approximately 17 gross acres in area, located along the westerly frontage of Taylor Avenue, a county road.

8. The Property, on information and belief, is flat; contains approximately two small ponds; is bisected in part by a northeasterly-southwesterly drainage swale; and is served by private well.

9. The Property includes a failed septic system.

/////

10. On information and belief, defendant Global Materials operates a recycling center with business facilities at 3899 and 3911 Santa Rosa Avenue, operating under Sonoma County Use Permit PLP04-0064 and California Recycle Solid Waste Facility Permit ("SWFP") 49-AA-0390.

11. Plaintiff and defendants are engaged in the same general business and they compete with each other in the Sonoma County area.

FIRST CAUSE OF ACTION – UNFAIR AND UNLAWFUL BUSINESS PRACTICES

12. The allegations of paragraphs 1 through 11 are incorporated by this reference.

Unfair and Unlawful Business Practices Stemming from Zoning Violations

13. In 1962, one John Hardin sought a zoning variance to operate an auto wrecking yard and paper bailing yard at 5050 Taylor Avenue, obtaining a one-year variance for the existing auto-wrecking and paper bailing activities. The variance was renewed later in 1962, requiring that the use not be expanded without additional permits.

14. No additional use permits, for any part of the Property, were ever obtained.

15. Rather than constrain itself to the locations and purposes authorized by the 1962 permit, defendants caused the use of the Property to be expanded into a de facto storage yard and satellite truck terminal for various vehicles, pieces of equipment, and trash storage bins.

16. Defendants have erected a barrier across Taylor Avenue, impeding the public right of way.

Unfair and Unlawful Business Practices Stemming from Lack of Regulatory Compliance

1. Aerial photographs reveal that the Property contains ponds, a drainage swale and vernal pools.

2. Defendants' use of a failed septic system is in violation of Sonoma County Code §§7-5, 24-33, 24-50, among other laws and regulations.

/////

/////

19. The lack of a National Wetlands Plant Survey on the Property creates a potentially significant yet unmitigated impact, in violation of Public Resources Code §21000, *et seq*.

20. Defendants' failure to assess soil and ground water contamination associated with either the previous auto dismantling or the present truck terminal/storage yard uses of the Property violates the Porter-Cologne Water Quality Control Act (Water Code §13000, *et seq*.) including failure to investigate the public health and ecological risks of the property as a brownfield site (Water Code §13304.2).

21. Defendants' development of those parts of the Property designated as probable tiger salamander habitat creates a potentially significant yet unmitigated impact, in violation of Public Resources Code §21000, *et seq*.

22. Defendants have deposited fill onto the Property, which lies in a lowland area located within the Laguna de Santa Rosa watershed, without a grading plan or grading permits, in violation of sections 11.04 and 11.16 of the Sonoma County Code.

23. The unlawful, unfair, and fraudulent business acts and practices described above offend public policy, as well as violate local, state and federal law. These acts have resulted and continue to result in harm to plaintiff and the public at large.

24. As a proximate result of the above-mentioned acts of defendants, plaintiff has been deprived of the patronage of a number of its actual and potential customers and is operating at an economic disadvantage, all to its damage, in an amount to be proved at trial, trebled.

SECOND CAUSE OF ACTION – NUISANCE

25. The allegations of paragraphs 1 through 24 are incorporated by this reference.

26. Defendants' use of its failed septic system is a public nuisance per se.

1. Defendants' actions create a nuisance. The nuisance affects, at the same time, a considerable number of persons and plaintiff in that defendants are operating without permits, or with expired permits, thereby creating a health hazard.

2. Defendants' occupation and use of the Property constitutes a nuisance within the meaning of Civil Code §3479 in that it is injurious to the health of plaintiff and the community.

1. On or about May 27, 2010, plaintiff notified local and regional agencies about the above violations, yet said agencies have failed to act.

2. Defendants, and each of them, have threatened to and will, unless restrained by this court, continue to maintain the nuisance and continue the acts complained of, and each and every act will be in violation of the rights of plaintiff.

3. As a proximate result of the nuisance created by defendants, and each of them, plaintiff has been and will be damaged, in an amount according to proof.

4. Unless defendants, and each of them, are restrained by order of this court, it will be necessary for plaintiff to commence successive actions against defendants, and each of them, to secure compensation for damages sustained, thus requiring a multiplicity of suits.

5. Plaintiff has no plain, speedy, or adequate remedy at law, and injunctive relief is expressly authorized by CCP §526 and Civil Code §3491.

WHEREFORE, as to all causes of action, plaintiff prays for judgment against defendants as follows:

1. For an order requiring defendants, and each of them, to show cause, if any, why they should not be enjoined as set forth below, during the pendency of this action;

2. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining defendants from using all or any part of the Property, or any related property, for any unpermitted purpose;

3. For trebled damages in an amount to be proved at trial;

4. For reasonable attorneys' fees in an amount to be proved at trial;

5. For its costs incurred; and

/////

/////

6. For any other and further relief as the court may deem proper.

DATED: March 2, 2011 CLEMENT, FITZPATRICK & KENWORTHY

By: S/
CLAYTON E. CLEMENT
Attorneys for Plaintiff